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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

**USA Commercial Mortgage Company
06-10725 – Lead Case**

**USA Capital Realty Advisors, LLC
06-10726**

**USA Capital Diversified Trust Deed Fund,
LLC
06-10728**

**USA Capital First Trust Deed Fund, LLC
06-10728**

**USA Securities, LLC
06-10729**

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Rieggle Presiding

**REPLY IN SUPPORT OF
APPLICATION TO EMPLOY
SIERRA CONSULTING GROUP,
LLC**

Date: August 4, 2006

Time: 9:30 a.m.

Affecting:

.. All Cases

or Only:

× USA Commercial Mortgage Company

.. USA Capital Realty Advisors, LLC

.. USA Capital Diversified Trust Deed Fund, LC

.. USA Capital First Trust Deed Fund, LLC

.. USA Securities, LLC

The Direct Lenders Committee opposes the Official Unsecured Creditors' Committee for USA Commercial Mortgage Company (the "UC Committee")'s application to employ Sierra Consulting Group, LLC ("Sierra") as Financial Advisors. The Direct Lenders ask, "Why can't the Unsecured Creditors' Committee work together with the other Committees, specifically the Diversified Fund Committee, and the Debtors to share



1 the cost of and the information gathered by the Financial Advisors already employed and
 2 avoid needlessly increasing administrative expenses by employing more Financial
 3 Advisors to perform the same tasks?"

4 The UC Committee intentionally did not seek to hire a financial advisor at the
 5 inception of this case for this exact reason. Unfortunately, while the logic seems
 6 compelling, the Diversified Fund Committee's financial advisor works for its client, not
 7 for the UC Committee. Nor is Mesirow Financial Interim Management, LLC ("Mesirow")
 8 or its affiliates willing to provide information to any Committee in this case unless in the
 9 context of limited, specific requests or in a joint presentation by the Debtors for their
 10 purposes.

11 Finally, the professional reality is that the financial advisors approach issues
 12 differently than the lawyers or Committee members. They see different issues, they ask
 13 different questions, and they understand information with a different point of view than do
 14 the lawyers or Committee members. Absent a joint employment of, for example, FTI
 15 Consulting, Inc. ("FTI") by the Diversified Fund Committee and the UC Committee, the
 16 UC Committee effectively lacks the ability to meaningfully participate on a number of
 17 important issues in this case.

18 We offer recent examples from the Debtors' Motion to Distribute Funds, which
 19 entailed complex accounting issues.

20 1. The Distribution Motion raised questions as to how Debtors compiled,
 21 sorted and analyzed the data concerning collected funds.¹ Mesirow provided data in a
 22 relatively raw form. None of the analysis of that data by either FTI or Alvarez & Marsal,
 23 LLC² was provided, or even made available to, the UC Committee. In fact, Ted Burr of

24 _____
 25 ¹ The following statements are amplified and supported by Mr. Burr's attached
 supplemental declaration.

26 ² The UC Committee's interests on the Distribution Motion are largely antagonistic to
 those of the First Deed Trust Committee and the Direct Lenders Committee, and
 substantially different than those experienced by the Diversified Fund Committee.



1 Sierra analyzed the data, provided the results to Susan Smith of Mesirow, and Mesirow
2 substantially revised its data to address the issues Mr. Burr noted. When Mesirow
3 provided the data in a relatively raw form a second time, Mr. Burr again identified issues
4 that Mesirow would need to resolve. Finally, Mr. Burr was able to provide examples used
5 in the UC Committee's response to the Distribution Motion. The UC Committee freely
6 shared Mr. Burr's work with all of the other Committees. Conversely, (and we are not
7 complaining) no information or analysis of that data by any of Mesirow, FTI or Alvarez
8 was offered or provided to the UC Committee. Mr. Burr's analysis was then used in
9 preparing the UC Committee's response and his declaration.

10 2. An example of efforts to avoid duplication is similarly found in the Tucker
11 declaration supporting the Diversified Committee's response to the Distribution Motion.
12 Mr. Burr was not asked to and did not duplicate that FTI analysis.

13 3. Simply from reading the responses to the Distribution Motion, it is apparent
14 that only the UC Committee has pointed out USA Commercial's apparent fraudulent
15 conveyance claims against Lenders that received distributions from commingled funds in
16 USA Commercial accounts that were not derived from the respective Lender's Borrower.
17 The other Committees' constituents are entirely Lenders, and they might understandably
18 overlook a fraudulent conveyance analysis, and have a conflict of interest in advocating
19 for such litigation.

20 The UC Committee will continue to cooperate and coordinate with other financial
21 advisors to avoid duplicative services or billings to the estate. The UC Committee in
22 many ways stands between Debtors, Direct Lenders and the Funds, and may well be able
23 to assist in a consensual reorganization. Especially on issues where its interests are
24 adverse to the Funds and the Direct Lenders, however, the UC Committee's constituency
25 needs supporting financial analysis for effective representation, as well as a source of
26



1 possible expert witness testimony and preparation of financial exhibits for use in
2 presentations to the Court.

3 **Conclusion**

4 The UC Committee needs to employ a financial advisor, and asks the Court to
5 approve Sierra's employment. Nevertheless, the UC Committee remains committed to the
6 goal of having only one of the several financial advisors analyze issues whenever their
7 interests are aligned, and then provide its analysis transparently to the other Committees
8 and Debtors.

9 Dated July 31, 2006.

10 **LEWIS AND ROCA LLP**

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